

**IN THE UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF MISSISSIPPI  
NORTHERN DIVISION**

**JAMES E. DAVIS**

**PLAINTIFF**

**v.**

**CIVIL ACTION NO. 3:11-cv-093-MPM-SAA**

**ACA FINANCIAL GURANTY CORPORATION,  
and JOHN DOES One through Ten**

**DEFENDANTS**

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**PLAINTIFF'S MEMORDANUM BRIEF  
IN SUPPORT OF HIS SECOND MOTION TO AMEND COMPLAINT**

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COMES NOW, Plaintiff James E. Davis ("Davis"), and submits this Memorandum Brief in Support of his Motion to Amend Complaint. In support of the Motion, Davis states the following:

This matter was originally filed by two Plaintiffs, James E. Davis and Francois Kohlman, against Defendants seeking damages for Defendants' breach of contract related to insurance on certain securities bonds. Plaintiffs' Complaint was amended once prior on January 10, 2012. Subsequent to the first amendment, Plaintiff Francois Kohlman was voluntarily dismissed from the action.

During the course of pre-trial activities, the Court entered a Case Management Order on June 20, 2013, which established an August 15, 2013 deadline for Plaintiff to file amended pleadings. It is against this backdrop, as well as Rules 15 and 16(b)(3)(A) of the Federal Rules of Civil Procedure, that Plaintiff now seeks leave of Court to file a Second Amended Complaint to add another plaintiff with similar claims against Defendant, ACA. In fact, the proposed plaintiff's claims against Defendant are the same as those brought by Davis. If permitted to do

so, Plaintiff intends to file an amended complaint identical, or substantially similar, to the proposed Second Amended Complaint attached as Exhibit “A.”

Federal Rule of Civil Procedure 15 provides that after a responsive pleading has been filed, “a party may amend the party’s pleading only by leave of court” and that “leave shall be freely given when justice so requires.” Fed. R. Civ. P. 15. The decision as to whether leave shall be given is left to the court’s discretion, and the court may consider factors such as whether there has been any undue delay, or dilatory conduct, by the party seeking leave to amend in order to render its decision regarding leave. *See generally, Bloom v. Bexar Cty.*, 130 F.3d 722 (5<sup>th</sup> Cir. 1997); *see also, Halbert v. Sherman*, 33 F.3d 526, 529 (5<sup>th</sup> Cir. 1994).

Plaintiff argues to the Court that there has been no undue delay or dilatory tactics taken in regard to his prosecution of this case to warrant denying his Motion to Amend. Much of the pre-trial activity that has occurred in this matter since the Complaint was originally filed on July 15, 2011 has revolved around the issue of class certification; now that that issue has been decided, the litigation can proceed as a non-class action, thus the desire to amend the Complaint to add another plaintiff. Plaintiff also represents to the Court that leave to add another named plaintiff will not delay the proceedings and will not prejudice Defendant, ACA.

For the foregoing reasons, and pursuant to the deadlines established in the Case Management Order, as well as Rules 15 and 16(b)(3)(A) of the Federal Rules of Civil Procedure, Plaintiff respectfully requests that his Motion to Amend be granted and that he be allowed to file the proposed Second Amended Complaint.

Respectfully submitted, this the 15<sup>th</sup> day of 2013.

By: /s/ Jesse Mitchell, III  
Jesse Mitchell, III

*Counsel for Plaintiff*

OF COUNSEL:

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**CERTIFICATE OF SERVICE**

I hereby certify that on August 15, 2013, I electronically filed the foregoing with the Clerk of Court using the CM/ECF system, which will send notification of such filing to all counsel of record.

This the 15<sup>th</sup> day of August, 2013.

/s/ Jesse Mitchell, III

Jesse Mitchell, III